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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/008,388

12/07/2001

Janice A. Kehrli

G04.008

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02/24/2010

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EXAMINER

SHERR, CRISTINA O

ART UNIT

PAPER NUMBER

3685

MAIL DATE

DELIVERY MODE

02/24/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/008,388	<b>Applicant(s)</b> KEHRLI ET AL.	
	<b>Examiner</b> CRISTINA SHERR	<b>Art Unit</b> 3685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) 2-6,21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,7,9-18,20, and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Office Action is in response to Applicant's Amendment filed September 30, 2009. Claims 1-7, 9-18, and 20-23 are currently pending in this case. Claims 1, 11, 13, 20, and 23 are currently amended. Claims 8, 19, 24, and 25 were previously canceled. Claims 2, 3, 4, 5, 6, 21, and 22 were withdrawn pursuant to an earlier Requirement for Election/Restriction. Accordingly, claims 1, 7, 9-18, 20, and 23 are currently under examination.

### ***Response to Arguments***

2. Applicant's arguments, see Remarks, filed September 30, 2009, with respect to Objection to claim 1, as currently amended, have been fully considered and are persuasive. The Objection to Claim 1 has been withdrawn.

3. Applicant's arguments, see Remarks, filed September 30, 2009, with respect to the section 101 rejection of claims 1, 7, 9-18, 20, and 23 as currently amended, have been fully considered and are persuasive. The section 101 rejection to claims 1, 7, 9-18, 20, and 23 has been withdrawn.

4. Applicant's arguments filed September 30, 2009, regarding the section 103 rejections of the claims, as currently amended, have been fully considered but they are not persuasive.

5. Applicant argues, regarding claim 1, 20, and 23, that nothing in the cited prior art teaches, discloses or suggests, determining information and calculating a loan spread and a combined profitability associated with an additional mortgage rather than a vintage mortgage.

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6. Examiner respectfully disagrees and directs attention to Freeman, at, e.g. col 12 In 65-col 13 In 5, where freeman discusses determining information and calculating a loan spread and a combined profitability associated with a "new mortgage loan" .

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. In this case, claim 23 recites "instructions" as elements of the medium as opposed to data stored on the medium, thus rendering the claim unclear. It is suggested that language such as "'A computer readable medium storing executable instructions . . ." be substituted for greater clarity.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

11. Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Maggioncalda et al (US 6,012,044).

12. Maggioncalda discloses a medium storing instructions adapted to be executed by a processor. (col 5 In 35-56). In the instant application claim 23 recites instructions, which, as claims are not functionally related from the medium, and thus do not further

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distinguish claim 23 from the cited prior art. *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983), *In re Ngai*, 70 USPQ2d (Fed. Cir. 2004), *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1, 7, 9-18, 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al (US 6,249,775).

15. Regarding claim 1 –

16. Freeman discloses a method to facilitate analysis of a commercial mortgage backed security portfolio (e.g. col 1 ln 5-10), comprising:

determining by a computer base information for a commercial mortgage backed security portfolio including a plurality of mortgage loans, the portfolio being associated with a plurality of credit rating categories and each of the plurality of credit rating categories of the portfolio is associated with a corresponding category size that expresses the size of each credit rating category as a percentage of the total portfolio; (e.g. col 3 ln 10-21)

determining by a computer information associated with an additional mortgage loan to be added to the portfolio, including at least one desired profitability value for the additional mortgage loan, the additional mortgage loan being associated with a plurality

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of credit rating categories and each of the plurality of credit rating categories is associated with a corresponding category size that expresses the size of each credit rating category as a percentage of the additional mortgage loan; (e.g. col 15 ln 35-43)

calculating by a computer a loan spread associated with the additional mortgage loan in accordance with a contribution of the additional mortgage loan to the portfolio; (e.g. col 12, ln 32-45; note also that, as above, Freeman, at, e.g., col 15 ln 65 – col 16 ln 14, discloses where different types of loans are described as being separately graphed, i.e.,” nor should one place too much emphasis on the absolute height of each bar, since this may reflect different expectations among the various groups or types of loans that are being analyzed”. In other words, each loan has its bar and the height of different bars on the graph is attributed in part to the difference in the type of loan. col 15 ln 65 – col 16 ln 14. Because Freeman is looking at or considering different types of loans or obligations separately, and thus giving them different weights or emphasis, it would be a predictable that one variation of this would be to give mortgage loans all the “weight” or emphasis and no weight at all to other loans in predicting future profitability. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

calculating by a computer a combined profitability of the portfolio and the additional mortgage loan; (e.g. col 13 ln 50-65, col 14 ln 15-25).

17. Freeman does not specifically disclose calculating a combined profitability of the portfolio and the additional mortgage loan based on combined category sizes for the plurality of mortgage loans of the portfolio and the additional mortgage loan. However, Freeman does recite “a mortgage originator can perform portfolio analysis and ascertain

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which product type, program, type of underwriting, property type, type of customer, origination channel, etc. is at risk, without waiting for the mortgages to actually mature and enter default. The only constraint is the amount of data attributes that the mortgage loan originator keeps on any customer over time, which for the purposes of the present invention may be two years. The mortgage originator can then dynamically adjust the flow of origination by altering any credit criteria derived from a particular attribute.” (col 13 ln 50-60) Thus, it would be a predictable result to calculate combined profitability based on any available germane information, including based on combined category sizes for the plurality of mortgage loans of the portfolio and the additional mortgage loan. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

18. Freeman does not disclose transmitting the above information to a user terminal via network. However, official notice is taken that such transmission is old and well known since the Internet and other such networks have come into widespread use.

19. Regarding claim 7 –

20. Freeman discloses calculating the loan spread associated with the additional mortgage loan in accordance with a contribution of the additional mortgage loan to the portfolio. (e.g. col 12 ln 59- col 13 ln 4).

21. Regarding claim 9 –

22. Freeman discloses wherein the determination of category sizes for the additional mortgage loan is based on at least one of: a property type, a risk value, debt service coverage ratio information, and loan to value information. (e.g. col 13 ln 11-25).

23. Regarding claim 10 --

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24. Freeman discloses adding the category size for the additional mortgage loan to the current category size to determine a combined category size for each credit rating category. (e.g. col 13 ln 60-65)

25. Regarding claim 11 –

26. Freeman discloses determining by a computer an original profitability of the portfolio; calculating by a computer a combined profitability of the portfolio and the additional mortgage loan based on the combined category sizes; and subtracting by a computer the original profitability from the combined profitability to determine a profitability of the additional mortgage loan. (e.g. col 13 ln 60-67).

27. Regarding claim 12 –

28. Freeman discloses wherein calculation of the loan spread is an iterative process. (e.g. col 16 ln 36-45).

29. Regarding claim 13 –

30. Freeman discloses wherein the iterative process includes: determining by a computer a trial loan spread for the additional mortgage loan; computing by a computer a resulting profitability based on the trial spread; and adjusting the trial loan spread, wherein said computing and adjusting are repeated until the resulting profitability is within a predetermined range of the desired profitability. (e.g. col 13 ln 49=59, col 12 ln 59- col 13 ln 4).

31. Regarding claim 14 –

32. Freeman discloses wherein said adjusting is based on duration of the additional mortgage loan. (e.g. col 4 ln 61 – col 5 ln 5).



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33. Regarding claim 15 –

34. Freeman discloses wherein said adjusting comprises: determining an original duration of the portfolio; calculating a combined duration of the portfolio and the additional mortgage loan; and subtracting the original duration from the combined duration to determine the duration of the additional mortgage loan. (e.g. col 4 ln 61 – col 5 ln 5).

35. Regarding claim 16 –

36. Freeman discloses wherein the method is performed for a plurality of desired profitability values to determine a plurality of loan spread values. (e.g. col 15 ln 20-30).

37. Regarding claim 17 –

38. Freeman discloses wherein said calculating is performed via a substantially real-time pricing application. (fig. 5).

39. Regarding claim 18 –

40. Freeman discloses wherein said calculating is further performed utilizing a function library adapted to generate loan and/or commercial mortgage backed securities cash flows. (e.g. col 16 ln 55-65).

41. Regarding claims 20 and 23 –

42. Claims 20 and 23 are rejected under the same criteria as claim 1, above.

### ***Conclusion***

43. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

44. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

45. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRISTINA SHERR whose telephone number is (571)272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

46. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin L. Hewitt, II can be reached on (571)272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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47. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CRISTINA OWEN SHERR  
Examiner  
Art Unit 3685

/Calvin L Hewitt II/  
Supervisory Patent Examiner, Art Unit 3685